

April 23, 2019

Honorable P. Kevin Castel  
United States District Judge  
Southern District of New York  
500 Pearl Street, Courtroom 11D  
New York, New York 10007

Re: ***Pierson v. Facebook.com, Inc. (1:19-cv-397-PKC)***

Pursuant to Your Honor's January 17, 2019 Order, Plaintiff Kristen Pierson ("Pierson") and Defendant Facebook.com, Inc. ("Facebook") jointly submit this letter in anticipation of the Initial Pretrial Conference scheduled for 11:00 a.m. on May 1, 2019

## **1. Brief Description of the Case**

### **Plaintiff's Perspective**

Pierson is a professional photographer whose livelihood depends on licensing of her images. Pierson used her skill, talent and resourcefulness to photograph American politician and Republic member of Rhode Island House of Representatives Robert Nardolillo. Pierson retained all rights and interest in the photograph. The photograph were timely and properly registered with the United States Copyright Office.

Pierson then saw her Photograph on Facebook. Abiding by the DMCA rules, Pierson e-mailed Facebook's agent to take down her Photograph. Facebook responded back to Pierson's e-mail refusing to take down the Photograph. As a result, Facebook is not protected by the DMCA safe harbor.

Pierson asserts that Facebook was willful, intentional, purposeful, and in disregard or indifference to Pierson's rights in the photograph.

Accordingly, Pierson seeks statutory damages against Facebook for the copyright infringement as well as costs and attorney's fees.

### **Defendant's Perspective**

Defendant Facebook denies that it infringed Pierson's copyright in the photograph at issue because, among other reasons, the use of the photograph is protected under the doctrine of fair use. The photograph at issue is of Robert Nardolillo, a member of the Rhode Island House of Representatives. The depiction of Mr. Nardolillo was accompanied by an article describing his official conduct and efforts to advance legislation that the authors of the article criticized and commented on.

Defendant also plans to take discovery on whether Pierson actually owns the copyright in the photograph at issue and whether the copyright registration, which is a group registration covering numerous other photographs, is valid and enforceable.

Liebowitz  Law Firm, PLLC

**2. Contemplated Motions**

The parties anticipate that following the close of discovery, they will file motions or cross-motions for summary judgment on copyright infringement, fair use, and/or other topics.

**3. Prospect for Settlement**

The parties engaged in a preliminary settlement discussion. The parties are simply too far apart for a productive settlement discussion and discovery should commence.

Respectfully Submitted,

/s/Richard P. Liebowitz

Richard P. Liebowitz  
Liebowitz Law Firm, PLLC  
11 Sunrise Plaza, Suite 305  
Valley Stream, NY 11580  
(516) 233-1660  
RL@LiebowitzLawFirm.com

*Attorneys for Plaintiff Kristen Pierson*